IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.691 OF 2005

AND

CONTEMPT PETITION NO.24 OF 2005

IN

SUIT NO.6039 OF 1999

Munesh Alias Ricky Ralhan. ...Petitioner.(orig.deft.1)

vs.

Mrs.Rupali Shah. ...Respondent(orig.plff.)

Ms.M.Mohanty with Ms.S.Shaikh i/b. S.U.Srivastava & Co., for Petitioner.

Mr.Rohit Kapadia with Naushad Engineer i/b. Desai & Diwanji, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 14th March, 2007.

P.C.:-

1. The facts that are relevant and material for deciding this contempt petition are that the respondent Mrs.Rupali Shah filed a Civil Suit no.6039 of

1999 praying that a decree for cancellation of sale deed dated 25.5.1999 which according to plaintiff Mrs.Rupali Shah was executed by the defendant no.1 who claiming to be a power of attorney holder of the plaintiff Rupali Shah in favour of defendant nos.2 to 6. In that suit, the plaintiff had taken out a notice of motion no.3494 of 1999. Prayer clause (a) of that notice of motion reads as under:-

> "(a) that pending the hearing and final disposal of the suit the Defendants be restrained by a temporary order and injunction of this Hon'ble Court from entering upon the said property of the Plaintiff or disturbing her possession thereof or from claiming any right thereto or trying to deal with or dispose off, alienate, encumber or from alleging to be in possession of the said plot of land in any manner whatsoever, or claiming in rights under the said instruments."

That notice of motion came before the Court on 26.10.1999. The Court in paragraph (3) of the order dated 26.10.1999 noted that there is dispute between the parties as to who is in possession of the property. On the one hand, the plaintiff was claiming to be in possession of the property while on the other hand the second defendant was claiming to be in possession of the property. Therefore, in order to find out who is in actual possession, the Court observed that Commissioner needs to be appointed and therefore, the Court appointed Commissioner to visit the suit property and to submit the report to the Court in respect of actual possession of the property. The Court further observed that

until further orders, the parties are directed to maintain status quo in all respect regarding the suit property. The Court Commissioner who was appointed, visited the suit property and has submitted the report dated 11.11.1999. The Court Commissioner found that the plaintiff is in possession of the suit property. The notice of motion thereafter came up for final hearing before the Court on 24.9.2001 and the Court after hearing the plaintiff and defendant no.1 granted that notice of motion in terms of prayer clause (a). On 16.12.2004 the present contempt petition was lodged by the original defendant no.1 alleging that the plaintiff Mrs.Rupali Shah in August,2000 had entered into an agreement to sale the suit property to one Suresh Kumar. According to the petitioner, this act of the original plaintiff amounts to willfully disobeying the ad-interim order made by the Court in the notice of motion referred to above dated 26.10.1999. Perusal of the agreement to sale dated 30.8.2000 shows that the plaintiff had on that date agreed to sell the property to Suresh Kumar for Rs.2 crores 20 lakhs. Some of the amount was paid as earnest money. The balance amount was to be paid at the time of execution of sale deed and the possession was agreed to be given when the balance amount would be paid. According to the petitioner-original defendant no.1 the conduct of the original plaintiff i.e. the present respondent of entering into an agreement amounts to willful violating the ad-interim order passed in the notice of motion directing the parties to maintain status quo.

2. The respondent has filed an affidavit. In that affidavit, the

respondent denies that any agreement was entered into for selling the property to Suresh Kumar. It is stated by the respondent that there were merely negotiations going on between Suresh Kumar and the plaintiff. It is further claimed that the negotiations between the parties were held through Jai Dev Rana and that ultimately the negotiations failed and the agreement to sale entered into between the parties was canceled in October,2001. The original plaintiff has produced affidavit of Jai Dev Rana who has stated that he was a broker in that transaction and that transaction did not come through therefore, the transaction was canceled and the amount of the earnest money was refunded. The respondent-original plaintiff has also claimed that the petition is also barred by Section 20 of the Contempt of Courts Act.

3. The learned Counsel appearing for petitioner submits that by the ad-interim order, the Court had directed the parties to maintain status quo in all respect regarding the suit property. If this order is read with the prayer clause of the notice of motion, it will be clear that the original plaintiff was also restrained from disposing of the property as also from creating any encumbrance on the property. According to the learned Counsel, the conduct of the original plaintiff of entering into the agreement while that order was operating amounts to willful violation of that order. So far as the aspect that the petition being barred by Section 20 of the Contempt of Courts Act is concerned, the learned Counsel submits that the petitioner came to know of the transaction entered into by the plaintiff with said Suresh Kumar in July,2004 and thereafter,

immediately this contempt petition has been filed. The learned Counsel appearing for respondent-original plaintiff on the other hand submits that the suit was filed by the plaintiff who admittedly was the owner of the property challenging the sale deed which is alleged to have been executed by defendant no.1 posing himself as power of attorney holder of the plaintiff in favour of defendant nos. 2 to 6. In that Civil Suit the plaintiff had taken out a notice of motion seeking interim order for protecting his possession of the property and for restraining the defendants from transferring, alienating or creating any encumbrances on that property. According to the learned Counsel, perusal of the ad-interim order shows that the plaintiff was pressing for ad-interim order in his favour for protecting his possession and only because the Court observed that there is dispute between the parties about the possession of the suit property, the order of status quo made by the Court is restricted only to the aspect of maintaining status quo in relation to the possession of the suit property. It is further submitted that in any case the ad-interim order passed in the notice of motion taken out by the plaintiff cannot be interpreted to read that the order restricted the rights of the plaintiff himself in relation to the suit property. It is further submitted that entering into the agreement for sale does not amount to alienating the property or disposing of the property or creating any encumbrances in relation to the suit property. Therefore, mere conduct of entering into an agreement does not amount to violating the order. In any case that agreement has also been cancelled. According to the original plaintiff, there is no suit instituted by Suresh Kumar for a decree of specific performance.

It is further submitted that in terms of the provisions of Section 20 of the Contempt of Courts Act the petition can be filed within a period of one year from the date on which the contempt is alleged to have been committed. The date on which the petitioner came to know of the alleged contempt is not relevant unless it is the case of the petitioner that the alleged act of contempt was fraudulent and was concealed from the petitioner. The learned Counsel relied on the judgment of the Supreme Court in the case of "Pallav Sheth Vs. The Custodian, AIR 2001 Supreme Court 2763".

4. Now in the light of these rival submissions, if the record of the case is perused, it appears from paragraph (3) of the order dated 26.10.1999 that the plaintiff was praying for interim order for protecting his possession of the property, and there were disputes between the parties on the aspect as to who is in actual possession of the property and therefore, the Court decided to appoint Commissioner to find out as to who is in actual possession of the property, and therefore, until further orders the Court directed the parties to maintain status quo in all respect regarding the suit property. Therefore, in my opinion, it will be reasonable to say that the ad-interim order really relates to the maintenance of status quo in so far as the possessory aspect of the property is concerned. But even if it is assumed that because the order says status quo shall be maintained in all respects, that ad-interim even restrains the plaintiff from disturbing the status of the property then also that order would mean that the plaintiff is restrained from disposing of the property. By entering into an agreement for

sale neither the property is disposed of nor any right is created in relation to the property. Therefore, the conduct of the original plaintiff of entering into an agreement for sale cannot be said to have violated the ad-interim order passed by the Court. In any case, according to the original plaintiff that transaction has been cancelled. According to the original plaintiff, the person with whom the agreement for sale had been entered into has not filed any civil suit for a decree of specific performance. In my opinion, considering these circumstances, it will not be appropriate to hold the original plaintiff guilty of committing any contempt of the Court. What is further pertinent to be noted is that the Court at the final hearing of the notice of motion did not confirm the ad-interim order but has granted interim relief in terms of prayer clause (a) of the notice of motion. Therefore, in my opinion, it will not be appropriate to take any action against the original plaintiff under the provisions of Contempt of Courts Act.

5. As on merits, I find that the original plaintiff i.e. the present respondent cannot be held guilty of having committed contempt of this Court, it is not necessary for me to decide whether the petition is barred by the provisions of Section 20 of the Contempt of Courts Act. But since the submissions were advanced I must put it on record that I find substance in the submission made by the learned Counsel appearing for the respondent that even according to the judgment of the Supreme Court in "Pallav Seth" case referred to above, unless the petitioner makes out a case of fraud and fraudulent concealment as contemplated by Section 17 of the Limitation Act, the petition

will have to be shown to be filed within a period of one year from the date of occurrence of the alleged incident. As observed above, it is not necessary for me to record final conclusion on this aspect for disposing of this contempt petition. In the result, therefore, the contempt petition is disposed of. No order as to costs.

Show cause notice is discharged.